S.B.Civil Misc.Appeal No.125/1991.
M/s Jhulelal Oil and Rice Factory
vs.
The Rajasthan State Industrial &
Mineral Development Corporation Ltd.

Date of Order: 02.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. M.S.Panwar for Mr. Sajjan Singh for the appellant.
Mr. Ravi Bhansali for the respondent.

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Heard learned counsel for the parties.

This appeal is against the order of the learned Addl. District Judge No.1, Udaipur dated 3.4.1991 passed in Civil Case No.6/85, by which the learned Addl. District Judge,clarified the award passed by the learned Arbitrator-the District Collector, Udaipur and issued the rule of the court. The learned District Judge declared that the applicant-appellant shall be entitled to retain the industrial plot allotted to it by the respondent on payment of balance amount along with interest @ 12% per annum over the due amount.

The grievance of the appellant is only that the interest has wrongly been awarded by the arbitrator and upheld by the civil court.

Brief facts of the case are that industrial plot Ni.170B in industrial area of Udaipur was allotted to the appellant on 30.4.1975 on lease for 99 years. The possession of the plot was handed over to the allottee-appellant but the allottee neither raised construction of building nor

started the production, therefore, his plot was cancelled by the respondent. According to the applicant-appellant, he raised the construction but because of thunder, the structure fell down and, therefore, the applicant could not start the production work. According to the applicant he invested Rs.25,000/- to develop the plot for raising the construction in the year 1977. The applicant when found that the respondent has cancelled the plot of the appellant-applicant, he submitted the petition under Section 20 of the Arbitration Act for appointment of arbitrator before the District Court, Udaipur. The arbitrator was appointed by the order of the District Judge, Udaipur dated 20.9.1979. The learned District Collector by the award dated 6.7.1982 held that in case the applicant pays the current lease rent of the plot 170B within 15 days, the plot be restored in the name of the applicant-appellant and in case the payment is not made by the applicant-appellant, the respondent will be free to allot the plot to any other person.

The appellant submitted objection against the award dated 6.7.1982. The learned District Judge in its order dated 3.4.1991, after observing that the plot was allotted to the applicant-appellant in the year 1975 and possession was given to the appellant-applicant, the mater remained pending since 1979 to 1991 in the court, therefore, the applicant cannot be saddled with prevailing cost of the plot as awarded

by the arbitrator. The learned District Judge, therefore, held that the amount which has already been deposited by the allottee is required to be given credit and the applicant-appellant shall be entitled to retain the plot on payment of difference amount of the plot on the basis of rate which was prevailing in 1982 along with interest @ 12% per annum from 6.7.1982.

It is not in dispute that the appellant is in possession of the plot in question since last more than 31 years. The appellant has also paid substantial amount of the cost of the plot. It is also the case of the appellant that he tendered the amount to the respondent but that was not accepted. In identical facts and circumstances, this Court in the case of Laxmi Minerals & Chemicals, Udaipur vs. RICO & another (S.B.Civil Writ Petition No.3057/1993) decided on 22.10.2003, in the matter of allotment of plot by the RIICO, allowed the applicant to pay the development charges @ Rs.80/- per sq.mtr. with interest @ 14% per annum with effect from the date of the award upto date of payment.

In the present case, looking to the facts and circumstances of the case, it will be unjust to oust the appellant from the plot which has been allotted to the appellant in the year 1975 and the appellant is in possession of the plot. So far as the payment of interest is concerned, the court below has awarded interest @ 12% per annum over the balance due amount. The court below has rightly awarded the interest because

of the reason that appellant-applicant failed to show any reason for not awarding the interest over the balance amount due in the appellant.

The learned counsel for the respondent submits that this Court in the case of Laxmi Minerals and Chemicals, Udaipur(supra) awarded interest @ 14@ per annum. The said case of Laxmi Minerals and Chemicals, Udaipur was decided in a matter where originally the plot was allotted in the year 1975. In this case, since the appellant has already invested money over the plot and the court below has awarded interest @ 12% per annum and no cross appeal has been preferred nor cross objection has been filed, I do not find any reason to enhance the interest by 2% only looking to the totality of the facts of the case.

In view of the above, the appeal of the appellant is partly allowed and the appellant is allowed to deposit the entire balance amount as ordered by the court below along with interest @ 12% per annum within a period of one month from the date when the appellant-applicant is given complete details of dues by the RIICO. In case the appellant fails to deposit the demanded amount by the respondent within the stipulated period, the plot shall stand cancelled and the respondent will be free to take legal action against the appellant for recovery of the possession of the plot also.

(PRAKASH TATIA),J.

mlt.